CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 30.01.2018

Appeal No. ST/56967/2013-DB
[Arising Out of Order-in-Original No. 198-ST-PKJ-CCE-ADJ-2012 dated 20/11/2012 passed by Commissioner of Service Tax-SERVICE TAX – DELHI]

Vijay Kumar Kataria … Appellant

Vs.

CCE, Delhi … Respondent

Appearance:
Present Shri Abhishek Jajoo, Advocate for the appellant
Present Shri Sanjay Jain, AR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 50445/2018

Per: V. Padmanabhan

1. The present appeal is filed against the Order-in-Original No. 198/2012 dated 20/11/2012. The appellant his holding Service Tax registration for providing services falling under the category of construction services. They are also engaged in providing services in relation to Erection, Commissioning or Installation as well as Management, Maintenance or Repair Services to various clients. The dispute in the present case is regarding some contracts executed by the appellant for the Delhi Jal Board (DJB) in which nature of work involved replacing of old damaged water line, for improvement of water supply in various villages as well as replacement of badly silted and damaged sewer lines. During the course of investigation the various contracts were scrutinized by Department officers and they came to the view that the services rendered by the appellant are classifiable under Management, Maintenance or Repair Service defined under Section 65 (4) of the Finance Act, 1994. Accordingly, Service Tax was demanded for the period 2005-06 to 2009-10, totally amounting to Rs. 1,51,78,204/- along with interest and penalties under different Sections of the Finance Act, 1994. Aggrieved by the impugned order the present appeal has been filed.

2. With the above background we heard Shri Abhishek Jajoo, Ld. Advocate appearing for the appellant and Shri Sanjay Jain, Ld. DR appearing for the Revenue.

3. The Ld. Advocate appearing for the appellant submitted that instead of the service of Management, Maintenance or Repair under which the Adjudicating Authority has classified the Service rendered by the appellant, the Services are more appropriately classifiable under Commercial and Industrial Construction Service falling under Section 65 (25b). He submitted that this service specifically covers the activity undertaken by the appellant under clause (d) which covers Repair, Alteration, Renovation etc in relation to pipelines. He further submitted that since the services have been rendered to Delhi Jal Board, such services are not indented for Commerce or Industry and accordingly, no Service Tax will be liable to be paid. In this connection he also relied upon various case laws including ***Lanco Infratech Ltd. V/s CC, CE & ST Hyderabad 2015 (38) STR 709 (Tri.-LB)*** as well as ***Commissioner of C. EX., Tiruchirappalli V/s Indian Hume Pipes Co. Ltd. 2015 (40) STR 214 (Mad.)***.

4. The Ld. DR on the other hand, opposed such arguments and justified the impugned order. He specifically relied on the para 22.3 in the impugned order in which the adjudicated authority has considered the rival classification of services and has come to the conclusion that the activities of the appellant are classifiable rightly under Management, Maintenance or Repair services for the reason that such repairs are undertaken as part of a maintenance contract. Accordingly, he justified the demand of Service Tax and the penalties imposed.

5. We heard both sides and perused the appeal record. The dispute is with reference to a classification of the Services rendered by the appellant for Delhi Jal Board. The nature of the activity involves replacement of defective pipelines as also de-silting and repairing of existing pipelines. We have perused a few sample contracts which have been executed by the appellant for the Delhi Jal Board. It is seen that the contract is for replacement of pipelines in specified segments. It is not in the nature of an ongoing maintenance contract. The perusal of the contract further reveals that the same is not in the nature of construction or laying of pipelines/conduit.

6. The twp categories of services under which the classification may be considered are:-

i. Commercial and Industrial Construction falling under 65 (25b) which is reproduced below for ready reference:-

> *(a) Construction of a new building or a civil structure or a part thereof; or*
>
> *(b) Construction of pipeline or conduit; or*

(c) Completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) Repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,

Which is used, or to be used, primarily for; or occupied, or to be occupied, primarily with; or engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;

ii. “Management, Maintenance or Repair” is defined under Section 65(64) of Finance Act’ 1994 as follows:-

"Management, maintenance or repair" means any service provided by —
(i) any person under a contract or an agreement; or
(ii) a manufacturer or any person authorised by him, in relation to, —
(a) management of properties, whether immovable or not;
(b) maintenance or repair of properties, whether immovable or not; or
(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]

[3]*[Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this clause,—*

(a) "goods" includes computer software;
(b) "properties" includes information technology software;]

7. After considering the nature of the activity undertaken by the appellant and perusal of a few sample contracts, we are of the view that the service is more specifically covered under the category of Commercial and Industrial Construction, under the Sub-clause (d) of Section 65 (25b). Further we note that the activity has been executed for Delhi Jal Board which is not a commercial organization. The classification under Management, Maintenance or Repair will not cover the activities of the appellant since these are not in the nature of Maintenance Contract for specified period.

8. In line with the above discussions we come to the conclusion that the activities are classified under Commercial Industrial Construction and further will not be liable of payment of Service Tax during the disputed period in as much as the activity carried out is for Delhi Jal Board which is not a commercial organization.

9. In the result, the impugned order is set aside and appeal is allowed.

[Order Dictated and Pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha